

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs February 7, 2007

IN RE T.N.L.W.

Appeal from the Juvenile Court for Sullivan County
No. J31,572 Stephen H. Jones, Judge

No. E2006-01623-COA-R3-PT - FILED MARCH 26, 2007

H.C.W. (“Mother”) appeals the judgment of the trial court terminating her parental rights to her child, T.N.L.W. We hold that the evidence preponderates against the trial court’s conclusion that the Tennessee Department of Children’s Services (“DCS”) proved by clear and convincing evidence that (1) Mother was in substantial noncompliance with the permanency plan, Tenn. Code Ann. § 36-1-113(g)(2); and (2) the conditions that led to the child’s removal persist, and are unlikely to be remedied at an early date, Tenn. Code Ann. § 36-1-113(g)(3)(A). We reverse the decision of the trial court and remand with instructions to dismiss the petition to terminate Mother’s parental rights.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Reversed;
Case Remanded**

SHARON G. LEE, J., delivered the opinion of the court, in which HERSCHEL PICKENS FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Benjamin K. Mallicote, Kingsport, Tennessee, for the Appellant, H.C.W.

Robert E. Cooper, Jr., Attorney General and Reporter, and William N. Helou, Assistant Attorney General, for the Appellee, State of Tennessee, Department of Children’s Services.

OPINION

I. Background

On January 3, 2005, Mother's husband, D.L.W. ("Father"), confessed to sexually abusing his two older daughters from a previous marriage, T.N.L.W.'s half-sisters. Three days later, T.N.L.W. and her two half-sisters were removed from Mother and Father's home and T.N.L.W. was placed in the custody of DCS.¹ On February 9, 2005, the Juvenile Court of Sullivan County adjudicated T.N.L.W. to be dependent and neglected due to Father's abuse of his two older daughters. The Juvenile Court also approved the initial permanency plan for T.N.L.W., a copy of which was not introduced into evidence at trial, and which apparently provided for a goal of reunification with Mother. A second, revised permanency plan was developed on June 29, 2005, a copy of which is contained in the record.

At some point in time not revealed by the record, Father was arrested and convicted of four counts of rape of a child and four counts of incest. Father was sentenced to a fifteen-year prison term with no possibility of parole.

On January 30, 2006, DCS filed a petition to terminate Mother's rights to T.N.L.W. For grounds, DCS alleged: (1) abandonment by failure to provide a suitable home, Tenn. Code Ann. §§ 36-1-113(g)(1) and 36-1-102(1)(A)(ii); (2) substantial noncompliance with the permanency plan, Tenn. Code Ann. §§ 36-1-113(g)(2) and 37-2-403(a)(2); and (3) persistence of the conditions that led to the child's removal, Tenn. Code Ann. § 36-1-113(g)(3). After a hearing, the trial court ruled that DCS had proven by clear and convincing evidence that Mother was in substantial noncompliance with the permanency plan, and that the conditions that led to T.N.L.W.'s removal persisted. The trial court further found that termination of Mother's parental rights was in T.N.L.W.'s best interest.

II. Issues Presented

Mother appeals, raising the following issues:

(1) whether the trial court erred in ruling that DCS had proven by clear and convincing evidence that Mother was in substantial noncompliance with the permanency plan, pursuant to Tenn. Code Ann. § 36-1-113(g)(2); and

(2) whether the trial court erred in ruling that DCS had proven by clear and convincing evidence that the conditions that led to T.N.L.W.'s removal persisted and were unlikely to be remedied at an early date, pursuant to Tenn. Code Ann. § 36-1-113(g)(3).

¹The two older half-sisters had previously resided in Pennsylvania. After Father's admission, they were returned to Pennsylvania, presumably to the custody or oversight of Pennsylvania's Department of Children and Youth Services.

III. Standard of Review

A biological parent's right to the care and custody of his or her child is among the oldest of the judicially recognized liberty interests protected by the due process clauses of the federal and state constitutions. *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *Hawk v. Hawk*, 855 S.W.2d 573, 578-79 (Tenn. 1993); *Ray v. Ray*, 83 S.W.3d 726, 731 (Tenn. Ct. App. 2001). Although this right is fundamental and superior to claims of other persons and the government, it is not absolute. *State v. C.H.K.*, 154 S.W.3d 586, 589 (Tenn. Ct. App. 2004). This right continues without interruption only as long as a parent has not relinquished it, abandoned it, or engaged in conduct requiring its limitation or termination. *Blair v. Badenhop*, 77 S.W.3d 137, 141 (Tenn. 2002). Although “parents have a fundamental right to the care, custody, and control of their children,” this right is not absolute and parental rights may be terminated if there is clear and convincing evidence justifying such termination under the applicable statute. *In re Drinnon*, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988) (citing *Stanley v. Illinois*, 405 U.S. 645 (1972)).

Terminating parental rights has the legal effect of reducing the parent to the role of a complete stranger, “severing forever all legal rights and obligations of the parent.” Tenn. Code Ann. § 36-1-113(l)(1). The United States Supreme Court has recognized the unique nature of proceedings to terminate parental rights, stating that “[f]ew consequences of judicial action are so grave as the severance of natural family ties.” *M.L.B. v. S.L.J.*, 519 U.S. 102, 119, 117 S.Ct. 555, 565, 136 L.Ed.2d 473 (1996) (quoting *Santosky v. Kramer*, 455 U.S. 745, 787, 102 S.Ct. 1388, 1412, 71 L.Ed.2d 599 (1982) (Rehnquist, J., dissenting)). As a result, “[t]he interest of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment.” *Id.* The constitutional protections of the parent-child relationship require certain safeguards before the relationship can be severed. *O’Daniel v. Messier*, 905 S.W.2d 182, 186 (Tenn. Ct. App. 1995). This most drastic interference with a parent’s rights requires “the opportunity for an individualized determination that a parent is either unfit or will cause substantial harm to his or her child before the fundamental right to the care and custody of the child can be taken away.” *In re Swanson*, 2 S.W.3d 180, 188 (Tenn. 1999).

Termination proceedings are governed by statute in Tennessee. Parties who have standing to seek the termination of a biological parent's parental rights must first prove at least one of the statutory grounds for termination. Tenn. Code Ann. § 36-1-113(c)(1). Secondly, they must prove that termination of the parent's rights is in the child's best interest. Tenn. Code Ann. § 36-1-113(c)(2). Because the decision to terminate parental rights has profound consequences, courts must apply a higher standard of proof in deciding termination cases. Therefore, to justify termination of parental rights, the party seeking termination must prove by clear and convincing evidence the ground (or grounds) for termination and that termination is in the child's best interest. Tenn. Code Ann. § 36-1-113(c); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002).

The heightened burden of proof in parental termination cases minimizes the risk of erroneous decisions. *In re C.W.W.*, 37 S.W.3d 467, 474 (Tenn. Ct. App. 2000); *In re M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). Evidence satisfying the clear and convincing evidence standard

establishes that the truth of the facts asserted is highly probable, *State v. Demarr*, No. M2002-02603-COA-R3-JV, 2003 WL 21946726, at *9 (Tenn. Ct. App. M.S., Aug. 13, 2003), *no appl. perm. filed*, and eliminates any serious or substantial doubt about the correctness of the conclusions drawn from the evidence. *In re Valentine*, 79 S.W.3d 539 at 546; *In re S.M.*, 149 S.W.3d 632, 639 (Tenn. Ct. App. 2004); *In re J.J.C.*, 148 S.W.3d 919, 925 (Tenn. Ct. App. 2004). It produces in a fact-finder's mind a firm belief or conviction regarding the truth of the facts sought to be established. *In re A.D.A.*, 84 S.W.3d 592, 596 (Tenn. Ct. App. 2002); *Ray v. Ray*, 83 S.W.3d 726, 733 (Tenn. Ct. App. 2001); *In re C.W.W.*, 37 S.W.3d at 474.

In a non-jury case such as this one, we review the record *de novo* with a presumption of correctness as to the trial court's determination of facts, and we must honor those findings unless the evidence preponderates to the contrary. Tenn. R. App. P. 13(d); *Union Carbide v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993). When a trial court has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, considerable deference must be accorded to the trial court's factual findings. *Seals v. England/Corsair Upholstery Mfg. Co., Inc.*, 984 S.W.2d 912, 915 (Tenn. 1999). The trial court's specific findings of fact are first reviewed and are presumed to be correct unless the evidence preponderates against them. We then determine whether the facts, as found by the trial court or as supported by the preponderance of the evidence, clearly and convincingly establish the grounds for terminating the biological parent's parental rights. *In re S.M.*, 149 S.W.3d 632, 640 (Tenn. Ct. App. 2004). The trial court's conclusions of law are reviewed *de novo* and are accorded no presumption of correctness. *Campbell v. Florida Steel Corp.*, 919 S.W.2d 26, 35 (Tenn. 1996); *Presley v. Bennett*, 860 S.W.2d 857, 859 (Tenn. 1993).

IV. Analysis

A. Substantial Noncompliance With Permanency Plan

The trial court terminated Mother's parental rights based upon its finding, among other things, that Mother failed to comply with her responsibilities under the permanency plan, a written document which sets out the requirements to achieve family reunification or other appropriate goals. Tenn. Code Ann. §§ 37-2-402(8), -403(a)(1). Parental rights may be terminated upon proof, by clear and convincing evidence, that "[t]here has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan or a plan of care..." Tenn. Code Ann. § 36-1-113(g)(2). The requirements must be stated in specific terms and must be reasonably related to the specified goal. Tenn. Code Ann. § 37-2-403(a)(2)(A).

To prevail in a termination case on a claim of substantial noncompliance with a permanency plan, DCS must prove: (1) the terms of the plan, *Dep't of Children's Services v. D.W.J.*, No. E2004-02586-COA-R3-PT, 2005 WL 1528367 (Tenn. Ct. App. E.S., June 29, 2005); (2) that the plan requirements were reasonable and related to remedying the conditions that caused the child to be removed from the parent's custody in the first place, *In re Valentine*, 79 S.W.3d at 547; *In re L.J.C.*, 124 S.W.3d 609, 621 (Tenn. Ct. App. 2003); and (3) that the parent's noncompliance was substantial in light of the degree of noncompliance and the importance of the particular requirement that has not

been met. *Valentine*, 79 S.W.3d at 548-49; *In re Z.J.S.*, No. M2002-02235-COA-R3-JV, 2003 WL 21266854, at *12 (Tenn. Ct. App. M.S., June 3, 2003); *Dep't of Children's Services v. T.M.B.K.*, 197 S.W.3d 282, 293 (Tenn. Ct. App. 2006). Minor, trivial, or technical deviations from a permanency plan will not be deemed to amount to a substantial noncompliance. *In re M.J.B.*, 140 S.W.3d 643, 656-57 (Tenn. Ct. App. 2004).

As already stated, DCS did not introduce a copy of the initial permanency plan into evidence at trial. We have previously held that when DCS is relying on substantial noncompliance with the permanency plan as a ground for termination of parental rights, it is essential that the plan be admitted into evidence. In *Dep't of Children's Services v. D.W.J.*, this court made the following pertinent comments, which apply equally to this case:

Needless to say, the permanency plan must be admitted into evidence before the trial judge can consider it and it must be properly included in the record on appeal before we can consider it. The permanency plan was not admitted into evidence at any time during the trial. ... Tenn. R. Juv. P. 28(c) requires the proper admission of documents into evidence before they can be considered by the trial judge. Although various witnesses referred in their testimony to the permanency plan and its contents, their testimony was only an incomplete and vague description of the contents of the plan. Without the plan in evidence, the trial judge could not have properly made the required factual determinations regarding the plan. Without the plan in evidence, we do not have an adequate record from which to review the trial court's decision. DCS had the burden of producing clear and convincing evidence that the requirements of the permanency plan involving Mother's children were reasonable and related to remedying the conditions that necessitated the children's removal from her custody; that DCS had made reasonable efforts to assist Mother in complying with the plan; and that Mother had failed to substantially comply with the plan.

Dep't of Children's Services v. D.W.J., No. E2004-02586-COA-R3-PT, 2005 WL 1528367, at *3 (Tenn. Ct. App. E.S., June 29, 2005); *In re A.J.R.*, No. E2006-01140-COA-R3-PT, 2006 WL 3421284, at *4-5 (Tenn. Ct. App. E.S., Nov. 28, 2006).

As in *D.W.J.*, a case worker in this case testified as to some of the requirements of the plan. This is not sufficient. The permanency plan must be introduced into evidence in a case where termination is sought on ground of substantial noncompliance with the plan pursuant to Tenn. Code Ann. § 36-1-113(g)(2). Where there is a later revised plan, the original plan must still be included in evidence, in addition to the revised plan, if DCS is relying on noncompliance with the original plan as a ground for termination. *See In re A.J.R.*, 2006 WL 3421284, at *4. This is so because it must be clear, both to the trial court and to the appellate court upon review, exactly what

responsibilities and requirements were placed upon the parent by the permanency plan, and when they were to be completed. Because the initial permanency plan was not introduced into evidence, DCS has failed to prove by clear and convincing evidence its allegations that Mother was in substantial noncompliance with the initial permanency plan.

As regards Mother's responsibilities under the revised permanency plan, the plan required her to: (1) not allow any unsupervised contact between T.N.L.W. and Father; (2) complete an alcohol and drug assessment and submit to random drug screens, (3) complete a parenting assessment and cooperate with therapeutic visitation services; and (4) participate in "a mental health intake which will include a DSM IV diagnosis" and follow any recommendations therefrom; and (5) demonstrate the ability to provide a safe home for T.N.L.W. and to protect T.N.L.W. from any type of abuse. DCS failed to prove by clear and convincing evidence that Mother failed to substantially comply with these requirements of the revised plan.

As to the first requirement of the revised plan, DCS case manager Becky Hite testified that as far as she knew, Mother never allowed Father to be around T.N.L.W. after the allegations of abuse surfaced. There is no evidence in the record that Mother allowed any subsequent contact between T.N.L.W. and Father. DCS did not proffer any evidence suggesting that T.N.L.W. was ever abused by Father, nor that Mother knew or should have known that Father had abused his older daughters.

As to the revised plan requirements regarding an alcohol and drug assessment and a mental health intake, Ms. Hite testified about Mother's compliance as follows in relevant part:

We revised the Perm Plan on 6/29/05...[w]e also added that she would be alcohol and drug free, have an A & D assessment and follow the recommendations, submit to random drug screens and sign releases, *which she did*. She would have a parenting assessment and complete that and all recommendations and have therapeutic visitation and she would have a mental health intake and follow all recommendations with that as well. *She did have the parenting assessment*. We did a referral for, I think it was Family Ties to work with her *and she cooperated with that*. As far as the mental health intake and the A & D assessment, with her being in Kentucky we couldn't refer her to Frontier Health here, so I think it was Comp Care in Kentucky was going to do the assessment and I called and spoke with the staff there and she, *we set up an appointment and I think she missed one or two appointments*. There's a letter somewhere. *So that they terminated her services*. She showed up late for an appointment on 10/14/05 and was rescheduled to 11/1. She didn't keep her appointment on 10/31 or 11/1 and due to attendance problems they terminated services.
[Emphasis added].

Ms. Hite subsequently testified that Mother did undergo the required mental health assessment “about a year after [T.N.L.W.] was placed into custody,” but presumably before the termination petition was filed. Alicia Shively, another DCS case manager who worked on Mother’s case, testified that the mental health assessment “recommended stress management counseling. [Mother] had low risk on truthfulness, alcohol, aggressivity [sic], drugs. Resistance was medium risk and stress coping was high problematic risk, according to the questionnaire.” Regarding drug abuse, however, Mother admitted to having used marijuana on one occasion during the time at issue, and also admitted that she had occasionally abused narcotic pain medications. No expert medical or psychological testimony was presented regarding Mother’s mental health condition in this case. It appears from the proof that Mother substantially complied with the revised plan requirements regarding the drug and alcohol, parenting, and mental health assessments.

Regarding the final requirement that Mother provide a safe home for her child and protect her from any type of abuse, there is little evidence in the record about Mother’s home or its condition. There is no proof in the record that Mother failed to protect the child from abuse. Case manager Shively further testified as follows:

Q: So the goal was to provide a safe home for [T.N.L.W.] to be free from abuse in which [T.N.L.W.] would feel safe? Do you have any reason to believe that she hasn't achieved this outcome?

A: Well, without, you know, with not being able to visit the home myself and you know, not requesting another Interstate Compact, I, I don't know the specific status of her home.

Q: Okay. Do you have any specific reason to believe that she hasn't achieved this outcome?

A: No.

There is evidence in the record that Mother’s residency status was somewhat unstable during the year between removal of her child and the filing of the termination. Mother testified that she was initially living in an apartment in Corbin, Kentucky, and further stated as follows in this regard:

Q: Okay. Who did you live with when you first moved up there?

A: Just me.

Q: How long did you live in that apartment?

A: I lived there for six months until my lease was up.

Q: Okay, and why did you move?

A: My lease was up.

Q: I know, but why didn't you renew your lease?

A: Because I didn't want to stay there because it was an upstairs apartment and I just had had my baby and I was tired of packing her up and down stairs.

Q: Okay. Where did you move to?

A: I ended up moving to, towards London, in a trailer and then I wasn't there long. I was actually just –

Q: Is that where the home study was completed?

A: No. The home study was there at the apartment.

Q: They said you lived in a trailer, I thought?

A: Yeah, that's what I just said. I moved from the apartment into a trailer and then it got broke into so I moved and went to my Mom's.

Q: Okay. How long did you live in the trailer?

A: I didn't live there long. Probably, I'll say two or three weeks, because soon, when we was moving our stuff in, you know, I mean, this neighbor just come over there and busted in and he stole my TV and all that stuff, so I ended up moving out of there. The landlord wouldn't help, so I –

Q: Okay, where did you move then?

A: I moved in with my mom until I could find a place and then now I have been living in...I've been living there since, I think February or March, something like that.

Mother was living in the Corbin, Kentucky area during the time between removal of her child and the filing of the termination petition. Although she had previously lost her driver's license as a result of a DUI charge, Mother arranged to make the approximately six-hour round trip to Tennessee to visit T.N.L.W. every week. Ms. Hite testified as follows regarding Mother's efforts at visitation:

Q: All right. Tell me about her visitation with the child. How often would she visit and what was the visitation like?

A: She visited at least once a week. Sometimes it was a little more sporadic than others. There were points that she would, there were a couple of times, and I don't remember the dates, that she would not show up for visits and there were a couple of times she didn't even call to cancel the visits. Sometimes she would show up late, like thirty minutes late maybe. But for the most part she would make it to the visits.

Ms. Hite further testified that Mother acted appropriately with T.N.L.W. during the visits. Ms. Shively, who took over the case from Ms. Hite, testified that Mother never missed a visit since Ms. Shively started supervising her.

In its termination petition, DCS cited Mother's "extensive criminal record" in support of its argument that Mother's parental rights should be terminated. As far as the record shows, Mother's "extensive criminal record" consisted of the following incident. On at least one occasion, Mother drove herself to visitation, even though she did not have a valid driver's license. Mother attempted to use her sister's license as identification when she was pulled over in a traffic stop, and she was charged with driving on a revoked license and criminal impersonation. Mother was subsequently convicted of these charges. It appears Mother was further charged with failing to appear in court at some point during the relevant time period.

In its final order terminating Mother's parental rights, the trial court made the following findings regarding Mother's alleged noncompliance with the permanency plan requirements:

[T]he Permanency Plan was ratified by this Court and had the stipulation that [Mother] was to have no further contact with [Father]...There have been at least three (3) documented occasions where he and [Mother] were together following the adjudication of severe abuse. On one occasion [Mother] stated [Father] was at the home to get his clothing and other belongings.

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That [Mother] repeatedly failed to comply with the conditions of the Permanency Plan. That the mother continued her association with [Father] after she knew the facts regarding his sexual abuse of [T.N.L.W.'s] siblings [sic: half-siblings]. That [Mother's] association with the perpetrator was quite substantial.

It is clear from the above language and the trial court's comments at the conclusion of the hearing that its perception that Mother had violated the revised permanency plan by "associating with" or "having further contact with" Father was a significant factor in its decision. But the language of the revised permanency plan contains no such injunction. There is nothing in the revised permanency plan suggesting that Mother was forbidden to have any further contact with Father. Clearly, the plan required Mother to protect T.N.L.W. from abuse, and the terms of the plan required her to keep her child away from contact with Father, which she did. Although the initial plan is not in evidence, the testimony presented regarding its contents raises substantial doubt that it contained a requirement that Mother have no further contact with her husband. In any event, DCS failed to prove by clear and convincing evidence that this was a condition or requirement of the permanency plan, and the trial court erred in relying on this alleged violation to terminate Mother's rights.

Our review of the record presents a picture of a parent whose life is not exemplary in many respects, particularly as regards her drug abuse and criminal charges, but one who cares deeply for

her child and has made significant and substantial efforts to comply with what DCS has asked of her. The proof presented by DCS falls far short of establishing by clear and convincing evidence that Mother is incapable of providing T.N.L.W. with a safe and adequate home, or that Mother failed to substantially comply with the requirements of the revised permanency plan such that her parental rights should be forever terminated. Accordingly, we reverse the judgment of the trial court terminating Mother's parental rights upon the ground that she failed to substantially comply with the terms of the permanency plan under Tenn. Code Ann. § 36-1-113(g)(2).

B. Removal for Six Months and Failure to Remedy Conditions

The second ground relied on by the trial court to terminate Mother's parental rights was Tenn. Code Ann. § 36-1-113(g)(3)(A), which requires DCS to prove that:

- (3)(A) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:
 - (i) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;
 - (ii) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and
 - (iii) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home.

Tenn Code Ann. § 36-1-113(g)(3)(A); *see also In re Audrey S.*, 182 S.W.3d 838, 871 (Tenn. Ct. App. 2005).

The trial court's only findings regarding this statutory ground of persistent conditions in its order are that "the mother continued to abuse alcohol and drugs," and as follows in its entirety:

The Court finds clear and convincing evidence that persistent conditions exist, based on [Mother's] continued contact with [Father] after the child was placed in state custody. There have been three (3) documented occasions where [Mother and Father] were together, in violation of the ratified Permanency Plan.

There is no evidence in the record that Mother ever abused alcohol, nor is there any proof of her use of alcohol at all. The condition that led to T.N.L.W.'s removal was Father's confession to Kingsport police that he had sexually abused his older two daughters, which raised the threat or possibility of similar abuse of T.N.L.W. at Father's hands. Father is currently serving a fifteen-year term in prison

without possibility of parole, according to DCS' proof, so there is not clear and convincing evidence that this threat persists.

Further, Mother testified unequivocally that she considered her relationship with Father to be over, and that she had no interest in seeing him again and was involved with someone else, stating, "I just finally, you know, got to realizing that he was scum and he wasn't doing nothing but ruining my life and that he obviously did do something to his kids and I just gave up on him."

As is often the case when the two statutory grounds at issue here are alleged, much of the proof outlined and discussed above under subsection A in our analysis of substantial noncompliance is, to some degree, also relevant to a discussion of an allegation of persistent conditions. Based on our review of the proof presented and the record as a whole, we hold that the trial court erred in finding that DCS established by clear and convincing evidence the statutory ground of persistent conditions found at Tenn. Code Ann. § 36-1-113(g)(3)(A).

V. Conclusion

For the aforementioned reasons, we reverse the judgment of the trial court terminating Mother's parental rights to T.N.L.W., and remand with instructions to dismiss the petition to terminate. Costs on appeal are assessed to the Appellee, State of Tennessee, Department of Children's Services.

SHARON G. LEE, JUDGE